

S.A. 4
176004

CALLISON TIGHE & ROBINSON, LLC

ATTORNEYS AT LAW

PALMETTO ARMORY OFFICE BUILDING

1812 LINCOLN STREET

SECOND FLOOR

COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE
(803) 256-2371

FACSIMILE
(803) 256-6431

POST OFFICE BOX 1390
ZIP CODE 29202-1390

PRESTON H. CALLISON
RETIRED

WALLACE E. TIGHE
(1914-1998)

MICHAEL W. TIGHE
CERTIFIED ARBITRATOR
CERTIFIED MEDIATOR
RALPH C. ROBINSON, JR.
D. REECE WILLIAMS, III
LOUIS H. LANG
RICHARD C. DETWILER
NEKKI SHUTT
DEMETRI K. KOUTRAKOS
ANDREW C. ENGLISH, III
MARY DAMERON STUART
ALSO ADMITTED IN GEORGIA
MIKELL H. WYMAN
ALSO ADMITTED IN NORTH CAROLINA
ANITA E. ABERCROMBIE
JOSHUA O. C. LONON
JASON M. BOBERTZ
JENNIFER N. STONE

September 28, 2005
VIA HAND DELIVERY

9/29/05
tod

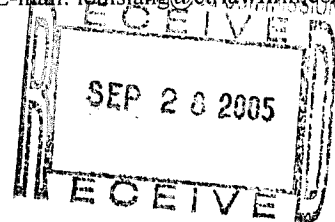
OF COUNSEL:
G. HAROLD HANLIN
DAVID L. EWING
ALSO ADMITTED IN FLORIDA
ARTHUR J. KEPES

FILED

SEP 29 2005

PSC SC
DOCKETING DEPT.

S.C. PUBLIC SERVICE COMMISSION
E-mail: louislang@ctr-lawfirm.com



Charles L.A. Terreni
Chief Clerk/Administrator
The Public Service Commission of South Carolina
Synergy Business Park
101 Executive Center Drive
Post Office Drawer 11649
Columbia, SC 29211

Re: Docket No: 2005-110-W/S-Order No. 2005-210 *Petition of the Office of Regulatory Staff to Request Forfeiture of the Piney Grove Utilities, Inc. Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver*

CT&R No: 1529.001\Piney Grove - ORS

Dear Mr. Terreni:

Enclosed please find a copy of a Consent Order regarding the Lloydwood Wastewater Treatment Facility and its collection system. This order appoints the City of Cayce as the temporary receiver for this system, which is, in part, the subject of the above-referenced matter pending before the Public Service Commission. I also enclose a copy of the Notice of Motion and Motion for Appointment of a Receiver, which has attached to it a copy of the Agreement between Cayce and the South Carolina Department of Health and Environmental Control. You will note that the Agreement was signed by the commissioner for the South Carolina Department of Health and Environmental Control on September 15, 2005.

I did not receive a copy of the enclosure until September 20, 2005, at which time I was involved in an arbitration hearing which did not conclude until September 22, 2005.

I submit the enclosures and respectfully request that they be included in the record in this matter. I believe that they are relevant to the issues before the Public Service Commission.

RECEIVED DATE: N/A
SERVICE: OK tod

CALLISON TIGHE & ROBINSON, LLC


Charles L.A. Terreni
Re: Piney Grove Utilities, Inc.
September 28, 2005
Page 2

By copy of this letter, I am providing copies of the enclosures to al parties.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang

LHL/cs

Enclosures

cc: Hugh Willcox Buyck, Esq. (w/ encls.)
Benjamin P. Mustian, Esq. (w/ encls.)
Julie F. McIntyre, Esq. (w/ encls.)
Mr. D. Reece Williams, IV (w/ encls.)

1529.001\Piney Grove - ORS\Clerk PSC 007

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Civil Case No.: 05-CP-32-1319

South Carolina Department of Health and
Environmental Control,

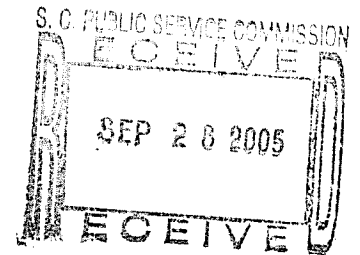
Plaintiff,

vs.

Piney Grove Utilities, Inc.,

Defendant.

CONSENT ORDER



Prior to a hearing on South Carolina Department of Health and Environmental Control's (DHEC) Motion for Appointment of a Receiver, the parties notified this Court that they had reached agreement as to the issue of an Order as requested in DHEC's Motion for Appointment of a Receiver, and the parties agree as follows:

1. The Defendant consents to the appointment by this Court, in accordance with S.C. Code Ann. § 15-65-10(4), of a receiver for Defendant's wastewater collection and treatment system at the Lloydwood Subdivision (Facility).
2. Plaintiff has entered into a Temporary Receivership Agreement with the City of Cayce (Exhibit 1) and Defendant has no objection to City of Cayce serving as temporary receiver of the Facility in accordance with the Agreement.
3. Accordingly, the City of Cayce is appointed as temporary receiver of the Defendant's Facility subject to the terms and conditions in the Temporary Receivership Agreement between DHEC and City of Cayce, and as such will:
 - a) serve without bond until further order of this court;

- b) be empowered to do all things needful to ensure proper operation and maintenance of the facilities;
- c) be empowered to access at all times the facilities and any appurtenances thereto (including pump stations, collection lines, etc.);
- d) be empowered to charge reasonable monthly rates, fees, and other charges to its customers, and to discontinue service for those customers who do not make timely payment for services or otherwise observe the procedures of the receivers with respect to service;
- e) be empowered to collect the service fees directly from customers instead of the Defendant; and
- f) be immune from liability from third parties for any conduct or liability for conditions that existed or arose prior to and up to the execution date of this Order.

4. The Defendant agrees that, within ten (10) days, it will provide the City of Cayce with such business records as are available regarding current customer information and monthly income and expenses at the subject facilities.

IT IS SO ORDERED.

September __, 2005

Lexington County, South Carolina

I consent:

Matthew S. Penn
Attorney for Plaintiff

I consent:

Louis H. Lang
Attorney for Defendant

The Honorable William P. Keesley
Eleventh Judicial Circuit
Lexington County

**IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Civil Case No.: 05-CP-32-1319**

**Notice of Motion
and Motion for
Appointment of a Receiver**

The Department of Health and Environmental Control (DHEC or the Department) will respectfully move the Court for an Order Appointing a Receiver based on an Order issued by the Honorable Marc H. Westbrook on May 20, 2005.

This matter came before this Court upon Plaintiff South Carolina Department of Health and Environmental Control's (Department) Complaint and Motion for a Temporary Injunction. A hearing on the Department's motion was held at the Lexington County Courthouse on April 22, 2005. The Department was granted authority to operate the Lloydwood facility for one week. Piney Grove Utilities later agreed to a one-week extension. A hearing was then scheduled for Friday, May 6, 2005, at the Edgefield County Courthouse. Appearing for the Department was Matthew S. Penn, Esq., and appearing for Piney Grove Utilities, Inc., was Louis Lang, Esq.

1. The Department agrees to continue providing an operator for the Lloydwood wastewater treatment facility (Lloydwood WWTF) until 5 p.m. on Monday, May 8, 2005.
2. Piney Grove Utilities agrees to attempt to enter into a financially viable relationship with a certified operator approved by the Department. If Piney Grove Utilities does not enter into a financially viable relationship with a certified operator approved by the Department by 5 p.m. on Monday, May 8, 2005, the Court will appoint a receiver for the Lloydwood

WWTF and collection system. The Court will appoint a receiver at such time that the Department files a motion to appoint a receiver.

3. The receiver appointed by the Court will have authority over the regulatory and business operation of the Lloydwood WWTF and collection system, including but not limited to compliance with the Department requirements and collection of user fees from the Lloydwood customers. Piney Grove Utilities' other assets and businesses will not be affected by the appointment of the Lloydwood receiver.
4. The Department agrees to be responsible for finding the receiver appointed by the Court, and the Department will continue providing an operator until the Court appoints a receiver.
5. Regarding the Department's request for Piney Grove to pay user fees collected for the Lloydwood WWTF to the Court to be held in escrow to cover the cost of proper operation and maintenance of the Lloydwood WWTF system, the parties agree that the Department can seek such payment from the receiver if the Court appoints a receiver. If Piney Grove enters into a financially viable relationship with a certified operator approved by the Department, the parties agree that the Court can consider this issue at a later date.

This agreement between the parties was memorialized in an Order, executed by the Honorable Marc H. Westbrook on May 20, 2005. See Attached Exhibit 1.

Pursuant to Paragraph 4 of the May 20th Order, the Department and the Office of Regulatory Staff entered into negotiations with the City of Cayce (the City) for the City to become a Temporary Receiver of the Lloydwood wastewater collection system and WWTF. The Department and the City have entered into a Receivership Agreement. See Attached Exhibit 2.

Accordingly, and pursuant to the terms of this Court's May 20, 2005, Order, the Department moves this Court for an Order appointing the City of Cayce as Temporary Receiver of the Lloydwood wastewater collection system and WWTF.

PRAYER FOR RELIEF

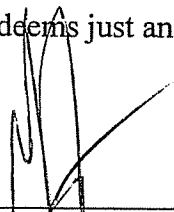
WHEREFORE, having fully set forth its Motion against the defendant, the Department prays as follows:

1. For an Order appointing the City as receiver of the Defendant's Lloydwood Subdivision collection system and WWTF and as such to:
 - a) serve without bond until further order of this court;
 - b) be empowered to do all things needful to ensure proper operation and maintenance of the facilities;

- c) be empowered to access at all times the facilities and any appurtenances thereto (including pump stations, collection lines, etc.);
- d) be empowered to charge reasonable monthly rates, fees and other charges to its customers, and to discontinue service for those customers who do not make timely payment for services or otherwise observe the procedures of the City with respect to service;
- e) be empowered to collect the service fees directly from customers instead of the Defendant; and
- f) be immune from liability from third parties for any conduct or liability for conditions that existed or arose prior to and up to the execution date of this Order.

2. For an Order requiring the Defendant to provide the City with such business records as are available regarding current customer information and monthly income and expenses at the subject facilities;

- 3. For reasonable attorneys fees and costs; and
- 4. For such other and further relief as this Court deems just and reasonable.



Matthew S. Penn, SC Bar #68669
Julie F. McIntyre, SC Bar #74013
South Carolina Department of Health
and Environmental Control
Office of General Counsel
2600 Bull Street
Columbia, SC 29201
(803) 898-3354 (voice)
(803) 898-3367 (fax)

September 26, 2005
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

AGREEMENT

WHEREAS, the parties to this Agreement are The City of Cayce (City) and the South Carolina Department of Health and Environmental Control (SCDHEC).

WHEREAS, the wastewater collection and treatment facility (collectively, Facility) which serves homes in the Lloydwood Subdivision in Lexington County, South Carolina, is authorized by National Pollutant Discharge Elimination System (NPDES) Permit No. SC0031402 to discharge treated wastewater into the unnamed tributary leading to Dry Branch consistent with the effluent limitations, monitoring requirements, and other conditions as set forth therein.

WHEREAS, the City has agreed to operate the Facility in order to assist and help the citizens who rely on the proper operation of the Facility and is entering into this Agreement as a service to the community.

WHEREAS, it is recognized that the City's receivership will not become effective until a judge with competent jurisdiction authorizes the City to serve as a receiver. Both parties to this Agreement further recognize that SCDHEC will seek an order from the applicable court which gives the City the authority to enter onto the Facility premises (including authority to access the collection lines for maintenance) at all times, to do any and all things needful to operate and maintain the Facility, to collect reasonable monthly rates for sewage treatment from the Facility's customers, and to terminate service for customers who do not timely pay sewage treatment bills.

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the mutual benefits to be derived by each party, they do hereby promise, covenant and agree as follows:

1. The City hereby agrees to be responsible for the operation and maintenance of the existing equipment connected with the Facility (subject to the limitation on City's expenditure of funds in section 4 of this Agreement). SCDHEC agrees that so long as the City makes a good-faith effort and uses due diligence to operate the Facility in compliance with this Agreement, the NPDES permit and applicable laws and regulations, it shall not be liable for violations or enforcement actions related to the Facility during the term of this Agreement; provided, however, that nothing herein shall be construed to bar SCDHEC from bringing

appropriate actions in the event of violations due to willful conduct or gross negligence. The City will operate and maintain the Facility to the best of its ability in accordance with this Agreement:

a. NPDES Permit # SC0031402 will remain in the name of Piney Grove Utilities, Inc., and will remain in effect.

b. The City will provide daily visits by a certified operator of the appropriate grade.

c. The City will be responsible for provision of all chemicals and maintenance in accordance with accepted industry standards to the best of its ability, subject to the terms of this Agreement.

d. The City will monitor the effluent discharge according to permit requirements and complete and submit monthly Discharge Monitoring Reports to SCDHEC in accordance with the NPDES Permit.

2. The City shall have the right to charge and collect rates due from each residential customer in accordance with the City's published wastewater rates for customers located outside the municipal limits. In the event it determines to undertake connection of customers to the City wastewater system, the City shall have the right to charge and collect, in addition to its published wastewater rates, a ten dollar (\$10.00) per month sewer capacity and maintenance fee from the customer or property owner, or, if the customer or property owner elects, a one-time lump sum 1 REU capacity fee of \$1570. The City shall require each customer or property owner to execute all City wastewater service agreements along with payment of applicable deposits.

3. Either party has the option to terminate this Agreement upon thirty (30) days written notice to the other party at any time. Notice also is to be given to the Office of Regulatory Staff.

4. The City will not be required to upgrade the Facility but will maintain it in its current condition, replacing elements of the Facility where necessary and practicable to keep the Facility operating properly, provided City shall not be required to spend more on operation and maintenance than the amount the City is netting from the rate structure described herein. Furthermore, if the City estimates that necessary operation and maintenance costs to allow the Facility to operate properly will exceed these net proceeds, the City shall notify SCDHEC of that

in advance and SCDHEC shall use reasonable efforts to obtain funds to put towards the operation and maintenance costs.

5. As temporary receiver for the Facility, the City will not be required to file an application for renewal of NPDES Permit No. SC0031402 with SCDHEC.

6. The City shall not be liable for the payment of any claims, fines, or judgments that may be pending against Piney Grove Utilities, Inc., either now or in the future, nor shall the City be liable for any financial obligations and/or debts of Piney Grove Utilities, Inc., either now in the future.

7. SCDHEC hereby releases, acquits and forever discharges the City of and from any and all Claims, known or unknown, whether in law or in equity, and whether in contract, tort or otherwise, which SCDHEC ever had or now has against Piney Grove Utilities, Inc., or the current operator(s) of the Facility serving the Lloydwood residential subdivision located in Lexington County, South Carolina, arising out of such operator(s)'s violation of Applicable Laws in operating or owning the Facility, including, without limitation, any violations arising out of contamination to Dry Branch arising out of discharge of sewage from the Facility into such creek.

8. As used in this Agreement, the following bold terms shall have the following meanings:

(a) **Applicable Laws** means and refers to all existing and future federal, state and local laws, statutes, codes, orders, rules and regulations applicable to the Facility or the provision of sewer utility services in the United States of America or the State of South Carolina, including, without limitation, the rules and regulations promulgated by federal, state and local authorities such as the Environmental Protection Agency, SCDHEC, the South Carolina Public Service Commission and the South Carolina Office of Regulatory Staff.

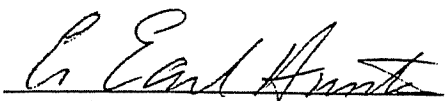
(b) **Claims** means and refers to any and all of the following: claims, demands, judgments, expenses, costs, liabilities, liens, suits, sums of money, causes of action, controversies, set-offs, counterclaims, third-party actions, proceedings, attorneys' fees and costs, or any liabilities whatsoever, without exception.

9. SCDHEC shall hold harmless the City and its officers, employees, agents, attorneys, contractors, successors and assigns, from and against any and all Claims (including, without limitation, court costs, attorneys' fees and expenses, engineers' fees and expenses and

the fees and charges of any contractor or expert retained or consulted by the City) arising out of loss of life, injury to persons, property or business or damage to natural resources or remediation thereof, arising directly or indirectly from or in connection with, with respect to, or as a direct or indirect result of any conditions existing with respect to the Lloydwood Facility, any adjoining or nearby land, streams, creeks or other bodies of water, or the Facility prior to or on the date of this Agreement arising from or related to the permittee's (Piney Grove Utilities, Inc.'s) operation of the Facility in violation of Applicable Laws or City's operation of the Facility after the date of this Agreement provided City complies with the terms of this Agreement and the claims do not arise out of City's willful misconduct or gross negligence.

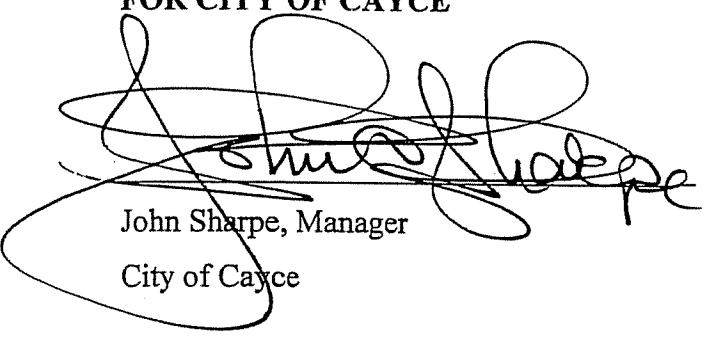
10. The undersigned hereby represent that he or she has authority to enter into this Agreement and does so voluntarily on the date given below.

FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL


C. Earl Hunter, Commissioner
South Carolina Department of
Health and Environmental Control

DATE: Sept. 15, 2005

FOR CITY OF CAYCE


John Sharpe, Manager
City of Cayce

DATE: 9-20-05